

NOT FOR PUBLICATION

IN THE DISTRICT COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. THOMAS AND ST. JOHN

Gloria Walters,)	
)	
)	
Plaintiff,)	Civ. No. 2004-09
)	
v.)	
)	
Gail Norton, Secretary of the)	
Interior,)	
Defendant.)	
)	
)	
)	

ATTORNEYS:

Karin A. Bentz, Esq.
St. Thomas, U.S.V.I.
For plaintiff.

Jocelyn Hewitt, Esq.
St. Thomas, U.S.V.I.
For defendant.

MEMORANDUM OPINION

Moore, J.

This defendant has moved to dismiss this case for failure to state a claim upon which relief can be granted. Because the plaintiff has alleged enough facts to proceed with her complaint, the motion to dismiss will be denied.

I. FACTUAL AND PROCEDURAL BACKGROUND

Plaintiff Gloria Walters is a 59-year old female who is a

native of Nevis. She brings this action against her employer, the Department of the Interior Office of the Inspector General Caribbean ["OIG"] for discrimination on the basis of gender, age and national origin. Plaintiff asserts claims for discrimination under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000a *et. seq.* and the Age Discrimination in Employment Act of 1967, 29 U.S.C. § 626 *et. seq.*

Walters is classified as a GS-13-06 Auditor-in-Charge and has been employed by the OIG for seventeen years. On March 26, 2002, there was an announcement for a GS-14 auditor vacancy in the St. Thomas office. Plaintiff alleges that she applied and was qualified for the position but was not selected. The position was filled by Ware, a Caucasian male in his thirties who had substantially less experience than Walter.

II. LEGAL STANDARD

In considering the defendant's motion to dismiss, I must accept as true all well-pled factual allegations, drawing all reasonable inferences in the plaintiff's favor. See *Bostio v. AT&T of the Virgin Islands*, 166 F. Supp. 2d 350, 354 (D.V.I. 2001); see also *Julien v. Comm. of Bar Exam'rs*, 923 F. Supp. 707, 713 (D.V.I. 1996); FED R. CIV. P. 12(b)(6). A motion to dismiss is only appropriate if "it appears beyond doubt that [the

plaintiff] can prove no set of facts in support of her claim which would entitle her to relief." *Pryor v. Nat'l Collegiate Athletic Ass'n*, 288 F.3d 548, 559 (3d Cir. 2002)(internal citations omitted).

III. ANALYSIS

Defendant argues that plaintiff has failed to establish a *prima facie* case of discrimination on the basis of sex, age, or national origin. While defendant correctly describes the burden-shifting approach under *McDonnell Douglas Corp. V. Green*, 411 U.S. 792 (1973), this discussion is premature at this stage of the case. To survive a motion to dismiss, all plaintiff must do is to allege a set of facts that support her claim of discrimination. The plaintiff need only set forth "a short and plain statement of the claim showing that the pleader is entitled to relief" as required by Federal Rule of Civil Procedure Rule 8(a)(2). *Swierkiewicz v. Sorema N. A.*, 534 U.S. 506, 510(2002) (citations omitted). Any discussion of proving a *prima facie* case of discrimination by a preponderance of the evidence is reserved for later, during trial or summary judgment proceedings.

In *Swierkiewicz*, the Supreme Court made clear that the *McDonnell Douglas* framework is an evidentiary standard, not a pleading requirement. See *Swierkiewicz*, 534 U.S. at 509.

Swierkiewicz dealt with a complaint of a plaintiff who alleged he had been terminated on account of his national origin in violation of Title VII and on account of his age in violation of the ADEA. The court held that his complaint, which detailed the events leading to his termination, provided relevant dates, and included ages and nationalities of at least some of the persons involved in the termination, contained more than enough allegations to state a claim upon which relief could be granted under Title VII and the ADEA.

In this case, Walters alleged as much, if not more, than the plaintiff in *Swierkiewicz*. She asserts that she is of Caribbean ancestry and over the age of forty, that she applied for the GS-14 auditor vacancy, and that she was qualified for the job. In addition, she alleges that a younger, Caucasian male with less experience than she was eventually given the job. These allegations are enough to withstand defendant's motion to dismiss for failure to state a claim upon which relief can be granted. Accordingly, I will deny the defendant's motion to dismiss.

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ENTERED this 27th day of December, 2004.

For the Court

_____/s/_____
Thomas K. Moore
District Judge

ATTEST:
WILFREDO MORALES
Clerk of the Court

By:_____ /s/ _____
Deputy Clerk

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FOR UPLOAD

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Gloria Walters,

Plaintiff,

v.

Gail Norton, Secretary of the
Interior

Defendant.

Civ. No. 2004-09

ATTORNEYS:

Karin A. Bentz, Esq.

St. Thomas, U.S.V.I

For plaintiff.

Jocelyn Hewitt, Esq.

St. Thomas, U.S.V.I.

For defendant.

ORDER

For the reasons given in the accompanying Memorandum Opinion
of even date, it is now

ORDERED that the motion of the Defendant, Secretary of the
Interior, is **DENIED**.

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ENTERED this 27th day of December, 2004.

For the Court

_____/s/_____
Thomas K. Moore
District Judge

ATTEST:
WILFREDO MORALES
Clerk of the Court

By:_____/s/_____
Deputy Clerk